STATE OF VERMONT
GREEN MOUNTAIN CARE BOARD

In re: MVP Health Insurance Company December 2015 Agriservices Association Rate Filing	)	GMCB-012-15rr SERFF No.: MVPH-130236588

AMENDED DECISION & ORDER

Introduction

Vermont law requires that health insurers submit major medical rate filings to the Green Mountain Care Board, which shall approve, modify, or disapprove the filing within 90 calendar days of receipt. 8 V.S.A. § 4062(a)(2)(A). On review, the Board determines whether the proposed rate is affordable, promotes quality care, promotes access to health care, protects insurer solvency, and is not unjust, unfair, inequitable, misleading or contrary to Vermont law. 8 V.S.A. § 4062(a)(3).

Procedural History

On September 9, 2015, MVP Health Insurance Company (MVPHIC) submitted its Agriservices Association Rate Filing via the System for Electronic Rate and Form Filing (SERFF) requesting a 26.9% average annual rate increase.[1] After finding an error in its rate calculation, MVPHIC submitted a revised filing on November 3, 2015 requesting an average annual rate increase of 27.4%. The Office of the Health Care Advocate (HCA), representing the interests of Vermont consumers of health insurance, entered an appearance as a party to this proceeding and on October 9, 2015, submitted suggested questions for the Board to ask the carrier. The Board has reviewed and posted to the web memoranda provided by its contract actuaries Lewis & Ellis (L&E), dated November 24, 2015, and by the Vermont Department of Financial Regulation (DFR) regarding solvency, dated November 2, 2015. The Board received no public comments during the public comment period. The parties waived a hearing pursuant to GMCB Rule 2.000 and each filed a memorandum in lieu of hearing.

The Board issued a Decision and Order disapproving the proposed rate increase on December 24, 2015, and, after MVPHIC moved for reconsideration, the Board issued a subsequent Decision and Order on January 21, 2015 denying MVPHIC's motion. MVPHIC appealed the Board's disapproval to the Vermont Supreme Court. In an Opinion entered September 23, 2016, the Court reversed and remanded

[1] The contents of the SERFF filing and all documents associated with its review by the Board can be found at http://ratereview.vermont.gov/rate_review/MVPH-130236588.

for new findings consistent with 8 V.S.A. § 4062. 2016 VT 111 (2016). The parties submitted proposed findings and conclusions for a subsequent Decision and Order on October 18, 2016.

Findings of Fact

Nature of the Filing

1. Agriservices is an association for farmers. MVPHIC is a for-profit New York health insurer that provides PPO and EPO products to individuals and employers in the small and large group markets in New York and Vermont. MVPHIC is owned by MVP Health Care, Inc. (MVP), a New York corporation that transacts health insurance business in New York and Vermont through a variety of for-profit and non-profit subsidiaries.

2. The arrangement between MVPHIC and Agriservices is a minimum premium plan. Under this arrangement, Agriservices pays its own claims up to 115% of expected claim liability, and MVPHIC provides administrative services and stop loss coverage at a pooling level of $200,000.

3. Agriservices offers five health plan options to its members. This filing affects approximately 1,220 covered lives with premiums effective for one full year beginning December 1, 2015.

4. In its September 2015 filing, MVPHIC proposed an annual rate increase that averaged 26.9% and ranged from 26.5% to 27.3%. MVPHIC discovered an error in its rate development and revised its filing on November 3, 2015. The revised filing increased the requested average annual rate change to 27.4%, with a range from 16.8% to 40.7%. As a result of the revision, the Board's actuaries commenced a new review of the filing.

5. Last year, the carrier submitted its 2014 Agriservices filing in July, allowing the Board to conclude its 90-day review, and the carrier to provide at least 30 days' notice to affected members of an approved rate change, prior to its December 1st effective date. This year, MVPHIC did not submit the Agriservices filing until September, then submitted a revised filing in November that prompted a new actuarial review. By waiting until September 9, 2015 to file its proposed rate increases, MVPHIC did not allow sufficient time for the Board to complete its 90-day statutory review period prior to the plan-year renewal date of December 1, 2015. As a result, it was impossible for MVPHIC to notify policyholders thirty days in advance of the new rates taking effect on December 1, as required by 8 V.S.A. § 4062(f)(1) and GMCB Rule 2.000, § 2.405.

6. On October 30, 2015, Agriservices notified its members of the proposed rate increase, that the increase was "pending approval,"[2] and that members who did not terminate their coverage would be billed their existing premiums until new rates were determined. Once rates became finalized, however, members would be billed retroactively at the new premium levels. Agri-services Agency, LLC, *Letter to Health Plan Sponsor* (10/30/15). In a subsequent correspondence, Agriservices advised members that they could terminate their coverage and enroll in a plan through Vermont Health Connect, but must do so no later than December 15, 2015 for coverage effective January 1, 2016. Agri-services Agency, LLC, *Letter to Health Plan Sponsor* (12/01/15). In addition, members could purchase coverage for one month (December 2015) to avoid a coverage gap, though it is not clear from the record whether or how effectively this offer was communicated to the Agriservices membership. Even if these circumstances are viewed in a light most favorable to MVPHIC, however, policyholders could not have firm knowledge regarding the exact rates for their plan, or how much they might be retroactively billed, until after the Board was able to complete its review. The Board could not complete its review and issue a Decision and Order until December 24, 2015, over three weeks after the commencement of the plan year on Dec. 1.

7. In the present and past filings, there has been some uncertainty regarding the legal status of the Agriservices plans under the Affordable Care Act (ACA). MVPHIC maintains that Agriservices can continue to offer non-ACA compliant health plans in Vermont because they are grandfathered.[3] *See* MVPHIC December 2014 Agriservices Association Rate Filing, Docket no. GMCB-019-14rr at 2; MVPHIC's Memorandum in Lieu of Hearing (MVP Memo) at 1, *available at* http://ratereview.vermont.gov/sites/dfr/files/GMCB_012_15rr_MVP_Memo.pdf ("no changes have been made over the past year that would cause the association to lose its grandfathered status"). MVPHIC also bases its authority to offer non-ACA compliant health plans on federal guidance relating to transitional plans.[4] MVPHIC Responses (10/19/15) ¶ 3 ("The renewal of existing coverage is permitted under federal law by the CMS bulletin issued on March 5, 2014"), (citing CMS Bulletin, http://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/transition-to-compliant-

[2] Agriservices erroneously advised members that the plans are reviewed by the Department of Financial Regulation, rather than by the Board.

[3] To qualify as a grandfathered plan, the plan must have been in effect on or before March 23, 2010, and have not been materially changed to reduce benefits or employer contributions since that time. Grandfathered plans are exempt from many changes required under the Affordable Care Act. 45 CFR 147.140

[4] Transitional or "grandmothered" plans are non-grandfathered plans that were in effect in October 2013. Like grandfathered plans, these plans do not have to be fully compliant with the ACA. The federal guidance allows transitional plans to renew up until October 1, 2016 and remain in force as late as September 30, 2017.

polocies-03-06-2015.pdf). These legal definitions for grandfathered and transitional plans, however, are mutually exclusive, and Vermont has not permitted transitional plans since March 31, 2014. *See* DFR Order Regarding Vermont Health Connect Transition and Implementation (Nov. 7, 2013), *available at* http://www.dfr.vermont.gov/reg-bul-ord/order-smooth-transition-vhc (coverage under transitional plans extended no later than March 31, 2014.)

8. In addition to this legal uncertainty, Agriservices previously advised the Board that because of internal management issues it would discontinue its policies in Vermont and that its members would purchase future coverage through Vermont Health Connect (the Exchange). *See, e.g.*, Docket no. GMCB-028-13rr at Findings ¶ 3 ("Starting December 1, 2014, Agri Services members will purchase health insurance through the health benefit exchange"); Docket no. GMCB-019-14rr at Findings ¶¶ 7, 8 (Agriservices' members will migrate to the Exchange in 2015; the 2014 filing is Agriservices' last). Agriservices also advised the Board that it was closing its plans to new members. Docket no. GMCB-019-14rr at Findings ¶ 8. Without an influx of new members, closed blocks of health insurance business tend strongly toward a self-perpetuating spiral of dwindling membership, increasing average age and health expenses, and sharply increased claims costs. Although it cannot be said conclusively on the basis of one or two years' worth of claims data that the block of business under review has entered such a "death spiral," a closed block of business requires heightened regulatory scrutiny to ensure that actuarial calculations do not override the statutory requirements of equity and fairness to policy holders while reviewing rates.

9. The Board premised its approval of Agriservices' previous rate filing—with a rate increase of approximately 14.9% for annual coverage beginning December 1, 2014—on MVPHIC's confirmation that the filing was its last and that members would be notified that they should enroll in an Exchange plan for 2015:

> [W]e accept MVPHIC's confirmation that this is Agriservices' final rate filing, and that members who choose not to renew their policies at this juncture are no longer eligible for Agriservices' coverage at any future date. The HCA sought this confirmation to ensure that plan members would not be limited in their access to federal subsidies as they migrate to coverage through Vermont Health Connect.
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> We approve the filing… with the understanding that this is our last review of an Agriservices filing. It is also our understanding that Agriservices must notify its members that their plans will no longer be available once the coverage period has ended.

Id. at Conclusions of Law ¶¶ 4, 9.

10. Agriservices experienced a 96.7% membership retention rate as of June 2015, prompting it to offer members the option to renew their plans in 2015.

11. Individuals purchasing plans on the Exchange are ineligible for federal tax credits and federally subsidized cost-sharing reductions if they are eligible for coverage through an employer-sponsored plan. *See* 26 U.S.C. § 36B(c)(2)(C)(i).

Summary of the Data and Analysis

12. MVPHIC used as a base experience period incurred claims from May 1, 2014 through April 30, 2015, and paid through June 30, 2015, to develop its proposed rates.

13. MVPHIC projected the base period claims minus claims in excess of $200,000 forward to the rating period using an annual effective medical trend of 6.6% and prescription drug trend of 17.5%, and adjusted the projected claims to account for a 2.7% stop loss fee. No adjustment was made for changes in demographics (age and gender). Thereafter, the cost was increased to account for expenses of 15.9% which include general administrative expenses of 9.75% and a 1.0% contribution to surplus.

14. The 27.4% proposed rate increase results from observed claim trends that have far outpaced premium increases. Between the 2014 and the 2015 experience periods, the observed trend was 30.4% for medical and 55.8% for prescription drugs, or a total observed trend of 32.6%. For the 2015 experience period, the overall medical loss ratio (MLR) for the Agriservices book of business was 108.9%, with a 109.2% MLR for members who are still active.

15. L&E has reviewed the filing and recommends that the Board make two modifications. First, L&E recommends that MVPHIC calculate the single conversion factor and demographic factor based on Agriservices' most recent enrollment distribution, which reduces the rate by approximately 0.9%. Second, L&E recommends that the carrier use Agriservices-specific experience to calculate its projected medical and prescription drug trends, which reduces the medical trend from 6.6% to 6.4% and the pharmacy trend from 17.5% to 17.1%. L&E Memo at 6. With these two modifications, the rate change decreases from 27.4% to approximately 25.9%. *Id*. at 8.

16. L&E observes that some members will experience "undoubtedly a significant increase" of 40.7% if the filing is approved. In addition, policyholders purchasing individual coverage will pay "noticeably higher" premiums than if purchasing comparable coverage on the Exchange, while families will pay "slightly lower" premiums. *Id*. at 5.

17. With the recommended modifications, L&E concludes that the proposed rates are not excessive, inadequate, or unfairly discriminatory. *Id*. at 8.

18. DFR reviewed the filing's impact on the carrier's financial health and finds that "the rate as proposed will have the impact of sustaining the current level of solvency." Solvency Analysis at 1. Further, based on its small percentage of business conducted in Vermont, DFR concludes that "MVPHIC's Vermont operations pose little risk to its solvency." *Id*. at 2.

19. The HCA requests that the Board disapprove, or in the alternative, modify the rate request "to make it as affordable as possible." HCA Memo at 5. The carrier requests that the Board reject L&E's recommended modifications and approve the rates as filed. MVPHIC Memo at 3.

Standard of Review

1. The Board reviews rate filings to ensure that rates are affordable, promote quality care and access to health care, protect insurer solvency, and are not unjust, unfair, inequitable, misleading or contrary to Vermont law. 8 V.S.A. § 4062(a)(3); GMCB Rule 2.000, *Rate Review*, §§ 2.301(b), 2.401. Further, the Board takes into consideration changes in health care delivery, changes in payment methods and amounts, and other issues at its discretion. *Id*. at § 2.401; 18 V.S.A. § 9375(b)(6).

2. As part of its review, the Board will consider DFR's analysis and opinion on the impact of the proposed rate on the insurer's solvency and reserves. 8 V.S.A. § 4062(a)(2)(B), (3). The Board shall also consider any comments received on a rate filing. GMCB Rule 2.000, *Rate Review*, § 2.201.

3. The burden falls on the insurer proposing a rate change to justify the requested rate. *Id*. at § 2.104(c).

Conclusions of Law

4. The proposed rate increases, ranging as high as 40.7%, are substantial and exceed any rate change previously approved by this Board. Findings of Fact (Findings) ¶¶ 4, 14. Indeed, even the carrier "acknowledges the size of the requested rate increases." MVPHIC Memo at 3. As noted by the HCA, for many, the proposed increases will be unaffordable. HCA Memo at 5. Moreover, because no new members will enter this closed block to spread risk and add healthy lives to the pool, it is unlikely that Agriservices members would avoid escalating future claims costs.

5. While a member can choose not to renew coverage if they find it to be unaffordable, the uncertainty caused by Agriservices and MVPHIC's decisions to continue the plans beyond 2015 and to file for a significant rate increase at a late date substantially prejudiced members making this decision.

We conclude that the current plan members were forced to decide whether to continue their coverage without firm knowledge of what rates they would be required to pay, or cancel, research, and purchase another plan, thus potentially experiencing a gap in coverage. While members may have had the option to purchase an additional month of coverage through the end of December 2015 to facilitate a transition to an exchange plan beginning January 1, because of the lateness of MVPHIC's filing, the Board was unable to complete its review and issue a decision until December 24, 2015. Notice of a substantial rate hike at that late date would have left members little time to arrange alternate coverage on the Exchange beginning in January 2016, and would have mooted the benefit of the December 2015 bridge coverage offered to those members inclined to consider an Exchange plan. *See* Findings ¶ 6. In sum, members of the plans under review would have little choice but to decide whether to renew their coverage based on incomplete information or face the possibility of a gap in coverage while enrolling in an Exchange plan at the end of December 2015 or later. We conclude that in creating this uncertainty for policy holders and exposing them to the risk of retroactive charges for premium increases, MVPHIC dissuaded members from pursuing necessary medical care and in so doing, failed to promote access to care.

6. Because of the legal uncertainties surrounding this closed block of business, we expressly premised our 2014-15 Agriservices rate decision, and our approval of an approximate 14.9% rate increase, on MVPHIC's confirmation that the filing would be Agriservices' last, and that Agriservices would notify its policyholders that their coverage would no longer be available at the expiration of the policy term. *See* Docket no. GMCB 19-14rr, Conclusions of Law ¶ 4 ("[W]e accept MVPHIC's confirmation that this is Agriservices' final rate filing"), ¶ 9 (filing approved "with the understanding that this is our last review…[and] Agriservices must notify its members that their plans will no longer be available once this coverage period has ended"). The approved 2014-15 increase included, or should have included, the cost of notifying members that the plans would no longer be available and that they should enroll in a Vermont Health Connect plan for 2016, as well as the cost of terminating members and terminating the plans. We conclude that the current rates, and consequently, any increases of those rates, are unfair, unjust, and inequitable, as the last increase reflected an additional cost to the insurer that the insurer then elected not to incur in contravention of the Board's Decision and Order.

7. Further, given the absence of any evidence in the record, we question whether Agriservices provided notice to its members that their plans could no longer be renewed, despite our clear statement that it must do so. The record suggests the contrary; MVPHIC, in response to a question from our actuaries, stated that Agriservices experienced a 96.7% membership retention rate as of June 2015,

prompting it to offer members the option to renew their plans in December 2015. However, the retention rate as of June 2015 necessarily would not reflect the renewal decisions plan members might make in the face of rate increases of the size proposed in this filing, and the decision to continue offering the plans to existing members into 2016 compounded the unfairness to members by voiding their eligibility for subsidies and tax credits on the Exchange.

8. Because this filing represents only a small portion of MVPHIC's overall business, our decision to deny the rate increase will have a nominal impact on the carrier's solvency.

9. The totality of the circumstances involved in the present filing weighs strongly in favor of rates that are equitable, just, and fair to policy holders, and that are as affordable as possible. Additionally, with the attendant risk that the proposed rates would incentivize coverage gaps or encourage plan members to drop coverage altogether in the face of rate shock, we cannot agree that the proposed rates promote access to care or quality of care. Accordingly, we decline to approve the filing and requested rate increase, and encourage the carrier to evaluate the plan's continued viability and affordability prior to any future request for additional rate increases.

Order

For the reasons discussed above, we disapprove the filing, resulting in no increase over Agriservices' December 2014 rates previously approved by this Board.

So ordered.

s/ Alfred Gobeille)
)
s/ Cornelius Hogan) GREEN MOUNTAIN
) CARE BOARD
s/ Jessica Holmes) OF VERMONT
)
s/ Betty Rambur)

Filed: November 10, 2016

Attest: s/ Marisa Melamed
Green Mountain Care Board, Health Policy Analyst

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Board (by e-mail, telephone, or in writing) of any apparent errors, so that any necessary corrections may be made. (E-mail address: Marisa.Melamed@vermont.gov).

Appeal of this decision to the Supreme Court of Vermont must be filed with the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.